

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH ROBINSON

v.

SOUTHEASTERN PENNSYLVANIA
TRANSPORTATION AUTHORITY

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CIVIL ACTION

NO. 02-2550

O'NEILL, J.

AUGUST , 2002

MEMORANDUM

Pro se plaintiff Kenneth Robinson has sued defendant Southeastern Pennsylvania Transportation Authority (“SEPTA”) alleging race discrimination in employment under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000 et seq. Defendant has moved to dismiss the complaint as untimely under Federal Rule of Civil Procedure 12(b)(6).

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss all or part of an action for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). In ruling on a 12(b)(6) motion, I must accept as true all well-pleaded allegations of fact, and any reasonable inferences that may be drawn therefrom, in plaintiff’s complaint and must determine whether “under any reasonable reading of the pleadings, the plaintiff may be entitled to relief.” Nami v. Fauver, 82 F.3d 63, 65 (3d Cir.1996) (citations omitted). “The complaint will be deemed to have alleged sufficient facts if it adequately put the defendant on notice of the essential elements of the plaintiff’s cause of action.” Id. Although I must construe the complaint in the light most favorable to the plaintiff, I need not accept as true legal conclusions or

unwarranted factual inferences. See Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Claims should be dismissed under Rule 12(b)(6) only if “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Id. Pro se complaints are to be construed liberally and held to a “less stringent standard than formal pleadings drafted by lawyers.” Haines v. Kerner, 404 U.S. 519, 520 (1972).

BACKGROUND

According to plaintiff’s complaint, as of March 30, 2000, defendant informed him that his employment status was such that he would be terminated if he were involved within the following two years in an infraction that was a “just cause for discipline.” (Pl.’s Comp. ¶ 2). On July 13, 2000, he was “involved in a vehicle accident,” following which he filed a grievance “alleging that the . . . accident was not a chargeable offense and thus not a cause for the termination of his employment.” Id. ¶¶ 3-4. Plaintiff asserts that on January 2, 2001, he received notice that his grievance had been denied and that he would be terminated from his employment. Id. ¶ 6. On October 31, 2001, plaintiff filed a charge of race discrimination with the Federal Equal Employment Opportunity Commission. Id. ¶ 8.

On January 28, 2002, the EEOC issued plaintiff a “Dismissal and Notice of Rights” letter stating that it had not investigated his case because it had not been filed within the time limit required by law. This letter informed plaintiff that he had the right to file a lawsuit based on his charge within 90 days of his receipt of the letter. On April 30, 2002, plaintiff filed the instant suit.

DISCUSSION

Defendant contends that plaintiff's claim should be dismissed as time barred for two reasons: (1) because the charge he filed with the EEOC was untimely, and (2) because he failed to file this suit within ninety days of receiving his right to sue letter from the EEOC. Under Title VII, a charge of race discrimination in employment must be filed with the EEOC within 180 days of the occurrence of the alleged unlawful employment practice. See 42 U.S.C. § 2000e-5(e)(1); see also Occidental Life Ins. Co. v. EEOC, 432 U.S. 355, 359 (1977). Where, as here, the employee also initiates a complaint with a parallel state agency the period for filing the charge with the EEOC is extended to 300 days from the date of the alleged unlawful employment practice. See 42 U.S.C. § 2000e- 5(e)(1). If, after 180 days, the EEOC has not resolved the charge, it must notify the complainant, see 42 U.S.C. § 2000e-5(f)(1), generally through the issuance of a "right-to-sue" letter, in which the EEOC states its reasons for not taking action on the complaint. See Walters v. Parsons, 729 F.2d 233, 237 (3d Cir.1984). The receipt of the right-to-sue letter indicates that a complainant has exhausted administrative remedies, an essential element for bringing a claim in court under Title VII. See Anjelino v. New York Times Co., 200 F.3d 73, 93 (3d Cir. 1999), citing Ostapowicz v. Johnson Bronze Co., 541 F.2d 394, 398 (3d Cir.1976)("The preliminary step of the filing of the EEOC charge and the receipt of the right to sue notification are 'essential parts of the statutory plan designed to correct discrimination through administrative conciliation and persuasion if possible, rather than by formal court action.' Because the aim of the statutory scheme is to resolve disputes by informal conciliation, prior to litigation, suits in the district court are limited to matters of which the EEOC has had notice and a chance, if appropriate, to settle.")

In Haydt v. Loikits, No. Civ. A. 99-4342, 2000 WL 1848598 (E.D. Pa. Dec. 19, 2000), I held that an employee who had received a right to sue letter from the EEOC stating: “[h]aving been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge” could not bring suit in federal court. Citing McLaughlin v. State System of Higher Educ., No. Civ. A. 97-1144, 1999 WL 239408, *2 (E.D. Pa. Mar. 31 1999), I stated:

Plaintiff’s failure to cooperate with the EEOC rendered the Commission unable to investigate effectively her charge and carry out its congressional mandate. “To allow plaintiffs to bring their Title VII claims in federal court under such circumstances would be to allow them to ‘emasculate Congressional intent by short circuiting the twin objectives of investigation and conciliation.’”

Similarly, in the case before me the EEOC was never given an opportunity to apply its expertise to plaintiff’s case because the charge “was not filed within the time limit required by law.”

EEOC Dism. & Not. of Rights Ltr. Plaintiff does not contest that the EEOC rejected his claim as untimely, but rather asserts that by his calculations he did in fact submit his charge to the EEOC within the required 300-day time period. The facts alleged in his complaint indicate that he did not file the charge within that time period.

Both the 300-day period for filing the administrative complaint and the 90-day period for filing the court action are treated as statutes of limitations. See Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393 (1982)(“We hold that filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit in federal court, but a requirement that, like a statute of limitations, is subject to waiver, estoppel, and equitable tolling.”); Figueroa v. Buccaneer Hotel Inc., 188 F.3d 172, 176 (3d Cir.1999)(noting that the Court of Appeals has held

that “a claim filed even one day beyond th[e] ninety day window [for bringing court action after receipt of right-to-sue letter] is untimely and may be dismissed absent an equitable reason for disregarding this statutory requirement.”) “While the language of Fed. R. Civ. P. 8(c) indicates that a statute of limitations defense cannot be used in the context of a Rule 12(b)(6) motion to dismiss, an exception is made where the complaint facially shows noncompliance with the limitations period and the affirmative defense clearly appears on the face of the pleading.”

Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n. 1 (3d Cir. 1994). There is no question that the basis of defendant’s motion is that plaintiff’s complaint is time-barred.

According to plaintiff’s complaint:

6. On January 2, 2001 Plaintiff received notice that his grievance had [sic] denied and that he would be terminated from his employment.
7. This is the first time that Plaintiff had received notice from the Defendant that his employment was being terminated for violation of the Last Chance Agreement.

(Pl.’s Comp. ¶¶ 6,7).¹ When plaintiff filed his charge with the EEOC on October 31, 2001, 302 days had passed since he had received notice of his termination on January 2, 2001.

Accordingly, he failed to file a claim with the EEOC with the time period mandated by Title VII.

See Lediu v. City of New York Human Resources Admin., No. 93 Civ. 4699, 1994 WL 455578,

¹ In his response to defendant’s motion plaintiff avers for the first time that he became aware that his grievance had been denied on January 5, 2001. In ruling on a motion to dismiss under Rule 12(b)(6), however, I am bound by the facts as pleaded in plaintiff’s complaint which unequivocally state that he received notice on January 2, 2001. See Pennsylvania ex rel. Zimmerman v. Pepsico, Inc., 836 F.2d 173 179 (3d Cir. 1988)(“A complaint may be dismissed when the facts pled and the reasonable inferences therefrom are legally insufficient to support the relief sought.); In re Burlington Coat Factory Securities Litigation, 114 F.3d 1410, 1420 (3d Cir. 1997)(“A motion to dismiss pursuant to Rule 12(b)(6) may be granted only if, accepting all well pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief.”)(citations omitted).

at *2 (S.D.N.Y. Aug. 22, 1994)(dismissing a pro se claim of discrimination as time-barred for failure to file a timely motion with the EEOC.). Plaintiff's pro se status cannot be used to circumvent these requirements. See Mohasco Corp. v. Silver, 447 U.S. 807, 824-25 (1980) (applying Title VII's 300-day limitation to a pro se plaintiff).²

An appropriate Order follows.

² As I have determined that plaintiff may not proceed with his claim because he failed to file a timely charge with the EEOC, I need not determine whether he is also barred from bringing suit because he did not file the instant suit within ninety days following his receipt of his right to sue letter. I note however that the EEOC's letter is dated January 28, 2002 and the instant suit was filed on April 30, 2002. When determining the date on which an EEOC letter has been received there is a presumption under the federal rules that in the absence of any evidence to the contrary a party shall be deemed to have received a document three days after it was mailed. See Seitzinger v. Redding Hospital and Medical Center, 165 F.3d 236, 239 (3d Cir. 1999)(citing Fed. R. Civ. P. 6(e)). Applying this presumption to the case before me, plaintiff received the right to sue letter from the EEOC on January 31, 2002, eighty-nine days before he filed the instant law suit.

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ORDER

AND NOW, this day of August, 2002, in consideration of defendant's motion to dismiss, plaintiff's response thereto and for the reasons stated in the accompanying memorandum it is ORDERED that defendant's motion to dismiss is GRANTED.

THOMAS N. O'NEILL, JR., J.